

**ENVIRONMENTAL QUALITY COUNCIL**  
November 14, 1997, Boone and Crocket Club, Missoula, MT  
Original Minutes with Attachments

**COUNCIL MEMBERS PRESENT**

Rep. Vicki Cocchiarella, Co-Chair  
Sen. Ken Mesaros, Co-Chair  
Rep. Haley Beaudry  
Sen. Vivian Brooke  
Rep. Kim Gillan  
Sen. Lorents Grosfield  
Rep. George Heavy Runner

Rep. Karl Ohs  
Mr. Bill Snody  
Mr. Jerry Sorensen  
Rep. William Tash  
Mr. Greg Tollefson  
Sen. Bea McCarthy

**COUNCIL MEMBERS EXCUSED**

Sen. William Crismore  
Ms. Jeanne-Marie Souvigney

Sen. Bill Wilson

**STAFF MEMBERS PRESENT**

Mr. Todd Everts  
Ms. Kathleen Williams

Ms. Martha Colhoun  
Mr. Larry Mitchell

**VISITORS' LIST**

**Attachment #1**

**COUNCIL ACTION**

- Approved the minutes from the September 18 and 19, 1997 meeting.
- Adopted EQC Public Participation Guidelines.
- Adopted the proposed format of the reporting form for HB 132 implementation (mandatory compliance and enforcement reporting).
- Approved holding a town hall meeting on the growth management process. This meeting would be held on public television.
- Approved holding the June 26th EQC meeting in Dillon.

## **I. CALL TO ORDER AND ROLL CALL**

CO-CHAIR MESAROS called the meeting to order at 8:00 a.m. Roll call was noted; SEN. CRISMORE, MS. SOUVIGNEY and SEN. WILSON were excused. (**Attachment #2**)

## **II. WELCOME TO MISSOULA**

CO-CHAIR COCCHIARELLA welcomed everyone to the EQC meeting. She introduced **Robin Selvig, Coach of the Lady Griz Basketball Team.**

**Mr. Selvig** commented that the work of the EQC was appreciated. When they recruit student athletes to this state, the beauty and the bounty of Montana is always an added incentive. He stated that they just recruited three Montana students to join the Lady Griz. He commended the Council members for the work they are doing to protect the healthy and beautiful environment of this state.

## **III. ADOPTION OF MINUTES**

CO-CHAIR MESAROS called for a motion to approve the minutes of the EQC meeting held on September 18 and 19, 1997.

**Motion/Vote: REP. TASH MOVED THAT THE MINUTES OF THE SEPTEMBER 18 AND 19, 1997 EQC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.**

## **IV. ADMINISTRATIVE MATTERS** - Mr. Everts

### *1. Adoption of EQC Public Participation Guidelines*

MR. EVERTS referred to the EQC Public Participation Rules, **Exhibit 1**, and asked the Council members to review the same.

**Motion: REP. TASH MOVED TO ACCEPT THE EQC PUBLIC PARTICIPATION RULES.**

**Discussion:**

REP. TASH commented that the subcommittees which met the previous day were very encouraged with the public participation at both meetings. The large crowd shared comments and concerns with the Council members.

CO-CHAIR MESAROS remarked that public participation is always encouraged. He continued that it is necessary to have some guidelines so everyone fully understands the process and rules in order for the meetings to be conducted in an orderly and professional manner.

**Vote: THE MOTION TO ADOPT THE EQC PUBLIC PARTICIPATION RULES CARRIED UNANIMOUSLY.**

MR. EVERTS explained that agenda item VIII had been changed due to the postponement of the federal lawsuit on the TMDL issue. The lawsuit will be heard on December 11th. MR. EVERTS and other EQC staff members will be travelling by state van from Helena to Missoula. He invited any interested Council members to attend and stated that the staff would also provide transportation for interested Council members.

He further commented that the Council members would be touring the Stone Container facility this morning. This tour would take approximately two hours.

*2. EQC Publications/EQC Internet Home Page*

MR. EVERTS referred to the water quantity handbook, Wading into Montana Water Rights. This was produced at the Water Center and edited by Michael Kakuk. He stated that notices had been sent out to all Legislators and interested persons regarding the availability of this booklet.

MR. EVERTS also reminded the Council members to respond to the questionnaire regarding the internet home page.

**V. DEPARTMENT OF ENVIRONMENTAL QUALITY REORGANIZATION**  
**UPDATE - Mr. Everts**

MR. EVERTS referred to a letter, **Exhibit 2**, which Council members received from **Mark Simonich, Director of the Department of Environmental Quality (DEQ)**. Since **Mr. Simonich** was unable to attend this meeting, the co-chairs requested a written statement on the rationale for dissolving the Impact Assessment Bureau. He further commented that in regard to the request for a written policy on MEPA implementation, the DEQ was unable to accomplish that in time for this meeting. They have committed to having **John North, Chief Legal Counsel**, provide a draft of the MEPA implementation policy and to present the same at the next EQC meeting for the Council members' review.

MR. EVERTS provided a letter from MS. SOUVIGNEY, **Exhibit 3**, which expressed concerns about recent DEQ activities.

CO-CHAIR MESAROS asked MICK ROBINSON, Governor's Office, to provide the Council members an update of recent DEQ activities.

MR. ROBINSON extended **Mr. Simonich's** apology for his inability to attend today's meeting. **Mr. Simonich** has a standing meeting, which is being held today, with the Montana Association of Counties and the League of Cities and Towns.

MR. ROBINSON stated that the recent change in the reorganization of the Department had been reviewed by the Governor prior to the implementation of the change. **Mr. Simonich** conveyed to MR. ROBINSON that he felt this Council understood that the reorganization which had taken place was an ongoing process. The magnitude of the reorganization would require that readjustment be necessary from time to time. When there are boundaries involved in different agencies, it sometimes becomes difficult to cross boundaries in terms of communication channels and cooperative activities. **Mr. Simonich** conveyed that reassigning those duties to other divisions would allow for better communication and cooperation.

MR. ROBINSON stated that in terms of the resignation of the Communications Manager, this issue surfaced recently. The letter of resignation was dated on Wednesday. MR. ROBINSON was in Cut Bank with the Governor that day. **Mr. Simonich** was in Big Sky that day and was not aware of the issue until Wednesday evening. The Governor considers the allegations to be very serious. The Governor met with the Communications Manager as well as with **Mr. Simonich** and **Curt Chisholm, Deputy Director**. He has asked the Communications Manager to spend the next two weeks documenting and providing evidence regarding the substantiation of her allegations.

SEN. BROOKE hoped that the Governor would caution the Director and Deputy Director regarding the unprofessional comments made in reference to the conduct of the Communications Manager. She felt the comments were gender stereotyping and that it was unprofessional that these types of comments would be coming from the administration.

CO-CHAIR MESAROS explained that this issue would be revisited under "Other Business" on this afternoon's agenda.

CO-CHAIR COCCHIARELLA thanked MR. ROBINSON for attending the meeting. She expressed concern with the process of not being able to have front line DEQ personnel make presentations to the Council. She asked for more open and positive communication between the EQC staff and the DEQ. She emphasized that public trust is at risk and public officials are always fighting to regain public trust in government.

CO-CHAIR MESAROS applauded the Governor's approach of openness to the public. He further stated that the EQC takes an elevated interest in the activities of the DEQ.

## **VI. SUBCOMMITTEE REPORTS**

### ***A. Growth Subcommittee - MR. TOLLEFSON***

MR. TOLLEFSON related that the Subcommittee is attempting to narrow the issues in order to better focus on priority issues. The Growth Management Subcommittee meeting held on November 13th was very informative. The Missoula County Planning Supervisor presented the Growth Management Subcommittee with information regarding the cutting edge technical capability which Missoula County enjoys. MS. COLHOUN provided the subcommittee with growth management initiatives in other western states. The Montana Consensus Counsel explained a possible initiative to encourage protection of more agricultural land in the state through conservation easements. Missoula County officials presented the subcommittee with an overview of the growth management issues which have been underway for the past three years. The Subcommittee was also given a presentation by the Ravalli County Planning Office. Ravalli County alternates as the fastest growing county in Montana with 30% growth since 1990.

The Subcommittee will be sending out a questionnaire to all the incorporated communities in the state as well as interested parties. The purpose of this questionnaire is to seek information regarding a potential role for the EQC in coordinating growth management activities. The questionnaire will be mailed out within the next few weeks and the members hope to have the results in by the next Subcommittee meeting, which will be prior to the next EQC meeting.

### ***B. Water Policy Subcommittee - REP. TASH***

REP. TASH explained that the Water Policy Subcommittee also met on November 13th. The Subcommittee members were pleased with the large crowd which attended and participated in their meeting. SEN. MCCARTHY and REP. TASH will serve as co-chairs of the Water Policy Subcommittee.

The main issue presented at the meeting was TMDL training, updates and implementation. **Gary England** and **Stewart Lehman** provided a very informative presentation. TMDLs are consistent standards to be used to ensure that water quality is met in the State of Montana. The

possibility of recruiting potential partners from other programs, with the same purpose and agenda as the EQC, was discussed. This would provide opportunities to enlist the support of a large number of water users. The water which is only used for interim periods should be left better than it was found. This is the purpose for mixing zones and water quality standards.

There were a number of persons who participated in the public comment section of the meeting. The participants stressed the importance of receiving uniform information from the different state agencies involved with water quality standards.

The work plan of the Water Policy Subcommittee will emphasize monitoring water policy issues within the state and also preparing a report for the next legislature.

SEN. GROSFIELD asked if the Environmental Protection Agency (EPA) had made any comments in regard to Montana's manner of addressing TMDLs.

REP. TASH stated that the EPA representative commented that Montana statutes are setting a unique example in respect to TMDLs. The states have the responsibility for implementing TMDLs and Montana is ahead of the curve in that regard.

REP. OHS remarked that all the western states have been very involved with TMDLs. He sees positive things happening when working groups in the watersheds discuss the issues and come up with solutions on implementation. Montana is moving down the same path as other states in our area.

REP. TASH presented the Council with a report entitled, "Environmental Assessment for Hirschy Conservation Easements", **Exhibit 4**. The Hirschy families in the Big Hole Basin are willing to contribute 10,000 acres of their ranch properties into a conservation easement. They have gifted a portion and sold a portion to the Department of Fish, Wildlife and Parks (FWP).

This guarantees that there will be open space. This is an example where we can see some effective growth management examples. The public wholeheartedly supported this project.

## **VII. GENERAL WATER POLICY UPDATES - 3 Instream Flow Leasing Programs:**

### *A. Introductions - Ms. Williams*

MS. WILLIAMS commented that the original statutory duties assigned to the Water Policy Committee were reassigned to the EQC in 1995. Those duties require the Council to advise the Legislature on the adequacy of the state's water policy, to oversee the Departments related to water policy and to communicate with the public. She introduced the presenters of the general water policy updates: **Liter Spence** - Department of Fish, Wildlife and Parks; **Bruce Farling** - Montana Trout Unlimited; and **Holly Franz** - Member of the Clark Fork Basin Steering Committee.

### *B. Presenters*

#### *FWP Flow Leasing Study - Liter Spence, Montana Dept. of Fish, Wildlife and Parks*

**Mr. Spence** remarked that he has been involved with instream flow programs in the state for 25 years. The Department of Fish, Wildlife and Parks first became involved in instream flows in 1969 with the passage of a law which allowed the Department to appropriate the unappropriated waters in twelve designated streams. In the early 1970s they acquired rights under the old water law, which they now call Murphy rights. James Murphy was a Representative from Kalispell who sponsored the legislation. In 1973, the Water Use Act, which allowed for water reservations, came into effect. From the mid-1970s until 1994 there were three large processes to acquire instream flows under the water reservation process. The difference between the water reservation process and the leasing program is that water reservations obtained as instream flows are assigned a priority date which needs to fit in with the priority dates of other water users on the streams on which instream flows are acquired. The instream flow water rights are in line with the water users who have earlier priority dates.

The purpose of HB 707 was to put water back into streams that have been de-watered. This was a very controversial natural resource issue. This legislation was very restrictive. It authorized a four year study which was to expire in 1993. This limited the number of streams which could be



studied for leasing. It also stated that any leases, which were acquired during the four year period, expired when the bill expired. This concerned many of the ranchers who were interested in leasing water. This legislation was amended in 1991. As a result of the amendments, any leases which were acquired during the four year time frame could continue past the expiration date of the bill, if the bill was to expire. The amendments also extended the number of streams to be studied from five streams to ten streams. In 1993, additional reporting requirements were added. The number of streams increased from ten to twenty streams. This legislation will expire in 1999.

Water leasing involves fish habitat in streams. The three components which provide for fish habitat are (1) a suitable, physical channel; (2) a suitable water quantity and (3) a suitable water quality. The Department acquires earlier priority date water rights, through a voluntary agreement with the water right holder, and uses those rights to put water back into the stream channel for fish habitat.

One of the first steps in this process is to have an environmental assessment prepared which is sent out for public comment. When the lease agreement is completed, they file a change application with the Department of Natural Resources (DNRC) which changes the purpose and place of use of the water right. The DNRC needs to determine whether there will be any adverse affects on other water users, if the water lease is put into place. This is accomplished by sending notices to all water users in the area and also publishing the information in area newspapers. If there will be an adverse effect, the lease is not granted.

The process was slow, mostly because people were hesitant to get involved. Their first leases went into effect in 1993. **Mr. Spence** referred to a handout which explained the features and costs of approved water leases, **Exhibit 5**. The first two leases were on Mill Creek, which is a cut throat trout spawning stream for the Yellowstone cut throat. This species has been on a decline in the Yellowstone Basin for a number of years. The intent of the lease was to improve flows in Mill Creek to improve the spawning conditions. Another lease was with Mill Creek Water District. This involved converting an inefficient flood irrigation system to a gravity

pipeline sprinkler system. They also entered into a lease with a private individual on Mill Creek. Their third lease was on Blanchard Creek in 1994. This stream has historically been a rainbow trout spawning stream. They leased the water right from an individual to keep water in the creek during irrigation season. In 1995 they were able to obtain four leases: Cedar Creek, Hells Canyon Creek, Tin Cup Creek and Mill Creek. In the Hells Canyon Creek, a large number of small rainbow trout were going down the irrigation ditch and they were losing about 40% of the fish. They put in a fish screen and now have zero loss of the fish into the irrigation system. In 1996, they obtained two leases up the Blackfoot on Chamberlain and Pearson Creeks, which are both cutthroat streams. The Cottonwood Creek lease was a little different in that they converted some of their own water rights on the Blackfoot/Clearwater Game Range to instream flow following some ditch lining.

Leasing is one tool they have available to work with water users for the purpose of improving flows. The Department hopes to continue obtaining leases. They have had approximately 85 interested parties. They have had to be very selective on the ones they have chosen. The Department would like to see the statute renewed in 1999.

*Private Party Instream Flow Program (HB 472 -- 1995) - Bruce Farling*

MR. FARLING explained that HB 472 was the result of eight months of negotiations between Trout Unlimited, the Montana Wildlife Federation, and the four main agricultural groups in the state. This legislation is referred to as the private leasing bill. It allows landowners to temporarily change the use of an appropriated right to instream flows. Water does not need to be leased. He presented the Council with two handouts, **Exhibits 6 & 7**. This legislation allows private parties to temporarily lease an appropriated right. This would allow an organization, such as Trout Unlimited, to make an agreement with a water right owner to lease the water. Only water that is historically consumed is left instream. Any appropriator considering a change or lease, must have a public notification of that intent in a local newspaper at least 30 days before the application is submitted to the DNRC. Other appropriators are allowed to file objections related to that change before approval. The provision will sunset in 2005. However, it can be continued for an additional ten years if approval is granted before the sunset date.

Trout Unlimited obtained the first lease in Montana of a private water right for instream flow purposes. This involved a tributary of Nine Mile Creek on the middle Clark Fork. Seven landowners were involved in the contract. They leased it for one dollar. This action will improve juvenile rainbow and cutthroat trout into the Clark Fork system. They have discussed several other potential leases around the state. At the current time they are looking at potential leases in the Bozeman and Livingston areas. **Mr. Farling** conveyed that he has prepared a rough screening process for possible leases. HB 472 may involve too much in the way of process which may cause expenses which are not really necessary. If there were some minor changes in the legislation, the process could be streamlined to be more cost effective for the people working on leases. This would allow more money to go to the people with the water rights instead of being used for consultant fees. The legislation simply allows for the situation where there is a strategic need for a small water body to benefit a fishery. They need more promotional help from agriculture in the area of peer promotion. This process is another tool to allow for cooperative improvements to make the small amount of water available in Montana go further for more uses. Currently there is a relative truce between the conservation community and agriculture over water use in the state. His goal is to make this truce a permanent situation.

*Clark Fork Basin Leasing Pilot Program - Holly Franz*

MS. FRANZ explained that she is a member of the Clark Fork Basin Steering Committee. In 1991, the legislature set up a committee which was charged with drafting a management report for the upper Clark Fork. This included the Clark Fork, Blackfoot, Rock Creek, Flint Creek, Clearwater and the Little Blackfoot. This committee was made up of a variety of interested parties. She represented the Montana Power Company. Instream flow was one of the main interests of the committee. They started working with the ranchers in the area as their first priority. They provided for extensive public comment and hearings. She presented the Council with a handout on the Upper Clark Fork Basin Instream Flow Pilot Project, **Exhibit 8**. One of the differences between the Clark Fork Program and the Statewide Instream Flow Program is that the statewide program specifically does not apply to public agencies. It defines persons to be private individuals, private corporations or private partnerships. In the Upper Clark Fork Plan, public agencies may also participate in the program. There has been only one lease under

this program thus far. That lease is by the Department of Fish, Wildlife and Parks in which they converted a water right which they owned.

The most important part of these programs is to convert water rights to instream flow. This will be used as a tool by ranchers, industry and other municipalities that have water rights which are in transition in their water use and they need to ensure those water rights are not abandoned.

Butte-Silver Bow County has acquired the Silver Lake Water System, which is the historic Anaconda Company water system. They will be using this system to provide water for the mine in Butte and the new silicone plant.

In the Flint Creek Basin, approximately a half a million dollars has been spent on a comprehensive return flow study. This is a very important issue of water use in Montana. The Big Hole Basin, which has a watershed planning activity, received a \$100,000 grant through the Renewable Resources Program. They are working on a similar return flow study.

One difference in the Clark Fork Program is that the prevailing party in the DNRC proceedings is allowed attorneys fees. This prevailing attorney provision works both ways.

CO-CHAIR MESAROS commented that return flow studies were discussed in the Water Policy Subcommittee which met the previous day.

REP. TASH stated that there is a sense that the water which is lost in the upper reaches of any stream collects down below and helps sustain the stream flows. The agriculture community is bothered by the fact that in the event that the upper reaches discontinue irrigation practices, a sprinkler system would not warrant the cost of energy or pipes. There are instances where leases have a good potential of continued beneficial water use.

SEN. GROSFIELD asked **Mr. Farling** to provide the Council with a copy of the checklist he referred to earlier which he has provided to his membership.

**Mr. Farling** stated that he would do so. This checklist is a flow chart which shows the critical path which needs to be followed.

#### **VIII. DEPART FOR THE STONE CONTAINER TOUR**

At this time, the Council members departed for a tour of the Stone Container plant.

#### **IX. COUNCIL MEMBER UPDATE ON NATURAL RESOURCE AND ENVIRONMENTAL ISSUES AFFECTING THEIR DISTRICT**

CO-CHAIR COCCHIARELLA explained that Missoula had a irrigation ditch problem wherein a number of people on the irrigation ditch system were not receiving water. She presented the Council with a handout, **Exhibit 9**. CO-CHAIR COCCHIARELLA further explained that the first step in the process was to identify anyone on the ditch system who did not appear to be receiving water. The next step was for that party to send a petition to district court. She presented the Council with examples, **Exhibit 10**. In Missoula, the property owners have until December 1, 1998 to ask for release from the irrigation ditch system. This process is necessary to be removed from the fees associated with the project. There were approximately 300 petitions submitted to the district court. Each one was protested by the manager of the irrigation district.

CO-CHAIR MESAROS commented that he was working with a group to resolve a conflict regarding wildlife on private land. The Department of Fish, Wildlife and Parks worked with the landowner. A neighboring outfitter intervened with a temporary restraining order which complicated the issue. However, negotiations are continuing with a spirit of cooperation on both sides.

REP. GILLAN explained that in the Billings area there is an economic development initiative to build an outdoor amphitheater. This situation deals with both environmental and growth management concerns. A site which is being looked at is an old landfill, which may contain hazardous materials. This property is immediately adjacent to an existing undeveloped public park which is right next to the Yellowstone River.

REP. TASH recounted a problem with the waste water treatment system in Dillon. There has been some leakage and there is a question on whether the responsible party would be the contractor or the City of Dillon. Negotiations are ongoing.

#### **X. WASTE TIRE WORKING GROUP UPDATE - Mr. Mitchell**

MR. MITCHELL provided the Council with a handout, **Exhibit 11** . He summarized that the 1997 Legislature passed a bill which required financial assurance of people operating a Class Three waste tire storage site in Montana. This legislation was brought about to attempt to prevent tires from piling up in landfills. The EQC has been charged with looking at alternatives to placing tires in landfills. A working group of people interested in tire management have been looking at this issue. This group is made up of landfill operators, tire dealers and recyclers.

At the last meeting, they had several informative reports which included using tires for rubberized asphalt for paving highways, tire bailing, incineration of tires as fuel supplements, and slicing and shredding tires. They also had reports on the procurement process for retread tires and also the 25% tax credit for purchase of depreciable equipment used for recycling. Tire management in other states was another interesting topic at the meeting.

As a group, the members are highly elevated in their knowledge of what can be done about tires because they have been watching this situation for 20 to 30 years. The group plans to meet one more time and that meeting will take place in either May or June of next year. They plan to have a round table discussion which will cover a selection process of problem identification, potential solutions and recommendations for implementation of the solutions.

#### **XI. MISSOULA ISSUES - OPEN FORUM FOR PUBLIC CONCERNS**

**Chuck Spoon, Missoula resident**, commented that he has lived in Missoula for 20 years and has worked as a professional forester during that time. He currently operates a natural resource consulting business. Referring to the handbook, Our Montana Environment . . . Where do We Stand?, he stated that the forest industry lands are being portrayed in a manner which is too

positive. There is one large corporate timber owner who has eight percent of the state's forest ownership. His concern is the rate at which harvesting is taking place and the condition of the land after the harvest. The BMPs of this owner usually come out with high ratings. He believed that this is being misread. The BMPs are monitoring the few items which the state has agreed would be monitored on forest harvesting. This doesn't relate to the quality of the forest which is left once the harvesting has been concluded. Too much land is being liquidated. The growing stock which is left is not healthy. On the industrial lands, everything is being taken off with the exception of the slower growing, more susceptible to insect and disease, shade tolerant species. The company which owns this land, may not have a long term interest in managing these timberlands in the future.

His concern is the future of these lands. To what extent will they be a part of the Montana heritage lands being available to the public. Will these lands be locked up with no trespassing signs. If these lands fall to state or public ownership, there may be a great cost involved.

MR. SORENSEN explained that he works for Plum Creek. He works with professional foresters who would present a very different point of view of the situation. They are managing the lands under environmental principles and would disagree with what has been presented today. Plum Creek has a very long term interest in the land it owns in Montana. That is the reason why Plum Creek acquired the Champion lands. They have invested millions of dollars in Montana with the intention to source the mills for at least the next 50 years. They are not liquidating the lands.

**Bob Ballou, Montana Audubon Society**, stated that he has lived in Montana for 25 years. He is heading up a program for the Montana Audubon Society which would create an awareness on the human population crisis we are facing. Growth management is like trying to hold back the ocean tide. We are fighting a losing battle. We first need to have control of the out-of-control population. The population in Montana is sure to double by the middle of the next century. It is time to put pressure on our elected officials to declare and carry out a population policy. As we become more and more crowded there will need to be increased restrictions and regulations.

SEN. BROOKE asked how one would go about convincing Montana, with all its open space, that there is a population crisis? **Mr. Ballou** remarked that he is a fly fisherman and the increased crowding on our streams points to a population crisis. The increased traffic and urban sprawl are also indications of a population problem as well as the degradation of our resources.

**Tony Tweedale, Environmental Activist**, commented that his work focuses on toxics. He stated that Stone Container's water permit is up for renewal. The Environmental Protection Agency (EPA) has made final a rule, known as the cluster rule, which will limit some of their toxic pollution. This is a very weak rule and involved a lot of backtracking by the EPA from its original proposal. The mill uses chlorine to bleach its pulp.

The TMDL process is a process to cover pollution. The compounds they are worried about is carbon containing molecules. The carbon chlorine bond is one of the strongest bonds in nature. That is what makes these molecules non-biodegradable. Since they contain carbon as well, they are fat soluble and accumulate in biological tissues and concentrate as they move up the food chain.

The EPA established a rule which will allow the mill here to use chlorine dioxide to bleach their pulp. Three hundred mills around the world have installed technology which will enable them to abandon the use of chlorine. The EPA rule is based around the Clean Water Act's best available technology requirement. The best available technology requirement has truly been overlooked.

In the non-degradation determination, persistent in value cumulative compounds have to be measured at the point of discharge, not at the end of a mixing zone. If Stone Container is four to six miles long, an incredible amount of pollution is going on in a four to six mile stretch of the river. Under the law, the only thing that matters is what is found at the end of the mixing zone.

He also addressed the adoption of the public participation rules. The EQC has worked diligently to improve its interface with the public. The rules which have just been adopted deal with the U.S. and Montana Constitutions and the statutes derived therefrom. He took exception to rule



no. 3 which stated that public comment would be taken at the discretion of the EQC Co-Chairs. Before taking significant action, the EQC is required by statute to take public comment. This is not a discretionary matter. He asked the Council to amend that statement to include the wording "except when required by law, it is not discretionary". Regarding rule no. 4, which dealt with limiting public comment due to time constraints, **Mr. Tweedale** remarked that public comment could not be limited to the extent of eliminating public comment. Rule no. 6 states that common courtesy is required of all parties. His opinion is that common courtesy is nice but there is case law in Montana wherein common courtesy is not a requirement. Courtesy is a restriction of free speech.

CO-CHAIR COCCHIARELLA asked **Mr. Tweedale** if changing the wording from "rules" to "guidelines" would address his concerns. The EQC is trying very diligently to make sure that their meetings are fair and that everyone is allowed to participate. The guidelines were prepared with the public in mind. The Council wants to make sure the public feels welcome to participate.

**Mr. Tweedale** stated that would not change the strong complaints he has with the rules. He appreciates the thrust of what the EQC is doing in this regard. He also values the fact that there are certain statutory requirements involved. Rule no. 6 is clearly unconstitutional. He would encourage the Council to adopt a statement on this issue which included that courtesy is valued and can facilitate communication, etc. The situation which occurred two years ago is that the EQC requested input from both proponents and opponents. When the discussion became controversial, the chair of the subcommittee tried to restrict the ability of people on his side to comment. Their opportunity to comment was cut off.

SEN. GROSFIELD asked for specific examples of when public testimony would be required by law.

**Mr. Tweedale** stated that the law states that public comment must be taken on all significant action. Significant is not defined. However, significant is equivalent to not insignificant which

is equivalent to not trivial. Anything that is more than trivial should have public comment. This is found in the Montana Code, Title 2, the public participation laws. This was adopted directly out of the constitutional requirements when the Montana Constitution was passed.

**Mike O'Harren, Natural Past Forestry Consultants**, stated he is also a downtown business owner. He remarked that some of the most desired neighborhoods are the downtown and historical districts in cities. Typically these neighborhoods are high density neighborhoods. People like to live in a town which has sidewalks and neighborhood parks. People also like to be close to shopping. If a traditional neighborhood was recreated in a place like Miller Creek, there would be no problem in selling the lots in that neighborhood. He is suggesting a grid network neighborhood with high density lots and sidewalks, which are separated from the streets with a planting strip, which would mimic the downtown and university districts.

After the last lot is sold, the developer does not own the land which has been developed. If we are visionary, the land belongs to the families and generations of people who will be living in that neighborhood for years to come. Quite often the developer is not even a Missoula County resident. This should be a main concern when regulating the way a subdivision is built. The developer does what is economically the best for his business.

SEN. GROSFIELD commented that not everyone wants to live in a town and many people are not interested in a neighborhood approach. Some people want to own 100 acres or more.

**Mr. O'Herran** remarked that he has lived in Montana for five years and works in forestry. He loves the wild lands and also hiking in the woods. He prefers to sacrifice his own freedom to live in a high density area so that there is more open area to visit and as well as flourishing wildlife in Montana. There is an organization called the Corporation for the Wild Rockies whose members talk to people visiting guest ranches and ask them not to start small developments which take away wildlife habitat. This is a real struggle for western Montana. If we don't look at this seriously and try pilot projects in certain areas to regulate growth and

manage subdivisions, developments will not be well planned. The infrastructure will not be there to support fire protection, sewer systems, etc.

SEN. GROSFIELD asked if he was suggesting a pilot project somewhere like the Nine Mile area.

**Mr. O'Harran** conveyed that would be a terrific idea and there would be no problem selling the lots of a traditional neighborhood development in a drainage as beautiful as the Nine Mile area. We should try projects which enhance choices.

MR. TOLLEFSON stated that there is a group of Nine Mile residents who are trying to develop a plan for their area and perhaps initiate some zoning.

## **XII. HB 132 IMPLEMENTATION (MANDATORY COMPLIANCE AND ENFORCEMENT REPORTING)**

### *A. Work Group Report and Review of Proposed Reporting Format*

MS. WILLIAMS presented a handout, **Exhibit 12**. She asked the Council what they wanted to do with the final product. HB 132 was the result of the intensive, time consuming study on mandatory compliance and enforcement reporting. The EQC had trouble finding out how certain agency programs were succeeding in the area of compliance and enforcement reporting. The reason was that either the data did not exist or it wasn't compiled. They have worked with the agencies to develop a reporting format. Twenty-four programs will be reviewed. The subcommittee worked with the agencies in explaining the objectives of the reports.

The two questions she had for the Council was whether the work group adequately communicated to the agencies what should be included in the reporting and how should that information be used.

CO-CHAIR COCCHIARELLA explained that HB 132 required that the agencies report their compliance and enforcement activities to the Council in a uniform way. She felt the subcommittee had captured the issues.

MR. TOLLEFSON remarked that they came away from the discussions with the state agencies with the understanding that they acknowledged that they would be able to deliver the information being requested. The reports should be very easily generated.

MR. SORENSEN thought the reporting form would work quite well and encouraged the Council to go ahead with it.

SEN. BROOKE wondered if the report could be used in the same way that the Legislative Audit Committee uses their reports, which is to look at ways to improve the operations within the administration and provide legislation for that improvement.

CO-CHAIR COCCHIARELLA felt the information could be used for the Council's charge of oversight responsibilities, guidance for future legislation, and also as a tool which could be used in the same manner as the audit committee reports.

SEN. BROOKE added that from the audits which are conducted, there is usually legislation proposed to improve department deficiencies. She questioned whether the Council was considering going forth with the same process.

REP. GILLAN commented that when the project was completed, it should be linked with the EQC home page. This would provide good public information.

**Motion: MR. SORENSEN MOVED THAT THE FORMAT OF THE REPORTING FORM FOR HB 132 BE ACCEPTED. THE MOTION CARRIED UNANIMOUSLY.**

REP. TASH suggested that the legislators be sent a checklist asking if they wanted further information which would be similar to the process used by the Legislative Audit Committee.

CO-CHAIR COCCHIARELLA maintained that the current format could be adopted with the understanding that upon review changes may be necessary at a later date.

**Don Allen, Western Environmental Technology Association**, asked why the Department of Fish, Wildlife and Parks was left out of this report.

CO-CHAIR COCCHIARELLA explained that they made those decisions up front when they prepared the compliance and enforcement study.

MS. WILLIAMS further commented that this involved a question of scale. The scope of 28 programs being reviewed stretched the ability of the staff and Council members. If they had taken on the Department of Fish, Wildlife and Parks, the process would have involved licensing. There were sessions where FWP personnel addressed certain topics such as illegal fish introductions and game farms. Those items were of specific interest. The work group did request a further update. The ability to incorporate all FWP enforcement programs was too much for the work group to handle.

**Mr. Tweedale** commented that before taking a vote, the Council should consider whether or not public comment was necessary.

### **XIII. VOLUNTARY BMP SEMINAR PLANNING**

MS. WILLIAMS stated that the January meeting would include a voluntary BMP seminar. There are a variety of definitions for BMPs from very technical water quality definitions to practices, programs, and policies with more decision making responsibility on the regulated entity. This would allow them to have more freedom of control over how they protected the environment in Montana. The Council has expressed that they would like to keep a broad focus on the voluntary component until after the seminar when they would choose how to proceed.

The staff suggested approaching the seminar in two parts. The first part of the seminar would be the broader approach. The second part would be the conceptual component. They would like to investigate some creative efforts in regulatory reform. This is where the regulated entity would have more responsibility rather than to respond to sets of rules. The ISO 14000 is an international set of standards which relies heavily on an internal auditing component of an established environmental management system. This is relatively new. ISO stands for the International Standards Organization which is based in Geneva. This is an international scale effort to internalize the responsibilities for environmental protection. The staff suggested working with the Department of Environmental Quality permitting staff and asking them for some of the more innovative programs for which they would like more information. The literature also has a lot of information on market incentives. There may be some options to look at case studies where market incentives have been incorporated into regulatory programs. The staff has also heard about effluent trading.

There are BMP Programs in place in Montana. These include forestry and the Placer Mining Project. There are also grazing BMPs. There are publications which some might call BMPs because the whole idea is to change land use practices so that water quality, from non-point source activities, is improved.

The second part of the seminar would be a panel presentation from the Forestry BMP Program, the grazing BMP effort, the Placer Mining BMPs, and some fertilizer BMPs.

REP. TASH felt this was a very important education tool. In order to be effective, these programs need to be voluntary to enlist the support needed to be successful.

**Patrick Heffernan, Montana Logging Association,** claimed that the forestry BMPs have become a real performance factor as far as water quality protection during timber harvest operations. They would like to be involved in the seminar and would participate by illustrating how the educational approach, when conducted in an intensive fashion, can lead to changes in

performance. That is the secret of voluntary compliance measures. Until people are taught to apply what's in the book, the mechanism is not effective.

**Mr. Tweedale** stated they were dealing with two theories which involved BMP incentives for areas that are not currently under regulation and those that are under regulation. He thinks incentives are important and can improve environmental quality but a corollary is that the right to know concept is also a very vital element.

MS. WILLIAMS commented that in the forestry program, the BMPs are voluntary but there are a lot of things which go along with that program. There is an extensive education program.

CO-CHAIR MESAROS remarked that one of the factors which has made the BMP Program successful is the voluntary aspect.

**Mr. Allen** stated that a year ago the Western States Forestry Task Force visited northwest Montana. He was impressed with the comments of legislators from states which have regulated programs on BMPs. They noticed that what was working in Montana was more effective than what they have in their own states with mandatory BMPs. This underscores the key role of education in the process. When you have a mandatory level, that sets the floor. With a voluntary program, there is always the opportunity to go above that mark. It is important to look at the positive impacts of a long list of opportunities.

CO-CHAIR COCCHIARELLA remarked that BMPs have application to any program related to enforcement or regulation.

**Bob Benson, Volunteer with the Clark Fork Coalition,** stated it was important to measure the bottom line. Compliance can be easily measured, but the bottom line is the water quality in the stream. All of our monitoring stations are much too broadly spaced to pick up any particular problem. He has worked on BMP audits for four sessions.

#### **XIV. OTHER BUSINESS**

MR. TOLLEFSON, referring to the letter from MS. SOUVIGNEY to the EQC (**Exhibit 3**), commented that the public perception is that there is some turmoil within The Department of Environmental Quality. The letter suggested that the EQC request a presentation from **Mark Simonich, Director of the DEQ** and/or the DEQ staff at the next EQC meeting. MR.

TOLLEFSON stated that he echoed her request. He had concerns with the presentation at the last EQC meeting wherein the Department represented to the Council that the EIS Bureau was running smoothly. He questioned when the decision was made to abolish the Bureau and further asked for more detail concerning this decision. Perhaps that decision was made, in part, due to the discussion which took place at the last EQC meeting.

SEN. BROOKE asked MR. EVERTS if he could provide ongoing reports to the Council. If the Council members were provided background information regarding DEQ activities, it would be helpful. Currently the information they are receiving is coming from the press.

MR. EVERTS explained that there was communication with his office and **Director Simonich** regarding the reorganization issue. He would be happy to keep the Council advised of the current status of events with the DEQ. He looked forward to working with the DEQ staff to provide a written update. He suggested the Council provide specific questions regarding their concerns.

SEN. BROOKE stated she had further questions regarding **Director Simonich's** letter to the Council. In particular, she commented that a reason given for abolishing the Bureau was lack of cooperation or collaboration. She saw this as negative and was confused whether it was the staff or other departments which were not cooperating.

MR. EVERTS suggested that the Council members provide him with questions. He would send a draft of the questions to the entire Council for their comment. This would then be sent to **Director Simonich** for his response.



CO-CHAIR COCCHIARELLA remarked that the correspondence to **Director Simonich** also request that the Council be informed up front about DEQ activities. Currently, the Council members have to rely on the accuracy of newspaper articles.

CO-CHAIR MESAROS asked for a time line for this information to be presented to the Council.

SEN. BROOKE simply wanted the Council members to be in the loop regarding DEQ activities.

CO-CHAIR MESAROS suggested a follow up within the near future, since the EQC would not be meeting until January.

#### *Growth Subcommittee*

MR. SORENSEN commented that the Department of Commerce was presenting town hall meetings on public television. Recent presentations have been on growth development. Last week there was a presentation on infrastructure. He suggested the Council be provided copies which could be viewed by the entire Council and/or the Growth Management Subcommittee.

The Department invited the EQC to hold a town meeting on the growth management process. The date which seemed to work the best was May 18th. The subcommittee should have the results of their survey by then and this would help prepare for the meeting. He asked for the Council's approval to go ahead with this project.

CO-CHAIR COCCHIARELLA remarked this was an excellent way for the Council to receive public input.

The Council members were in favor of going ahead with the proposed town hall meeting on the growth management process to be held on public television on May 18th.

MR. EVERTS stated his staff had prepared reports regarding two information requests. These reports provided important information on the permitting process as it relates to the Seven-Up Pete Joint Venture leases. He presented the reports to the Council.

**Rep. John Ellingson's** request, **Exhibit 13**, asked what decisions were needed on the project and also the conditions for approval or denial on each permit. He also asked for the authority of the Land Board and also the authority of the Department of Environmental Quality.

**Rep. John Cobb's** request, **Exhibit 14**, asked **Greg Petesch, Chief Legal Counsel for the Legislative Services Division**, to analyze the issues raised concerning the leases associated with the project. This request further asked for the authority of the Land Board in terms of their decision making capabilities on the project.

MR. EVERTS reported that a portion of his time is dedicated to staffing the Transition Advisory Committee (TAC). He staffs two of the four subcommittees for the TAC. The PSC Subcommittee will be looking at licensing for energy providers; aggregation for current and future energy providers; and reciprocity issues involved with the legislation. The Universal Systems Benefits Program Subcommittee is involved with renewables, low-income energy assistance and conservation. The TAC has been charged with making recommendations to the Legislature and the Governor on the implementation of the USBP fund to involve oversight of the fund. They have produced a newsletter which not only provides information to the Legislature but also to the public as well.

CO-CHAIR COCCHIARELLA commended MS. WILLIAMS on the request for information she provided. She also commended MR. EVERTS on his work with the TAC and further remarked that the work being done for the TAC will also benefit the EQC.

MR. EVERTS reminded the Council members to provide the staff with their EQC home page information.

**Motion: SEN. GROSFIELD MOVED TO CHANGE THE TERMINOLOGY FROM EQC PUBLIC PARTICIPATION RULES TO EQC PUBLIC PARTICIPATION GUIDELINES AND TO ADOPT THE GUIDELINES.**

**Mr. Tweedale** stated that if this motion was passed, he would look into the possibility of challenging the guidelines.

SEN. GROSFIELD asked MR. EVERTS to research Title 2 in respect to this issue.

**Vote: THE MOTION CARRIED UNANIMOUSLY.**

SEN. MCCARTHY asked that the meeting agenda note whether items were discussion only or whether the Council would be taking action on the item.

CO-CHAIR COCCHIARELLA commented that was an excellent idea. She asked that categories also be included.

**XV. CONFIRMATION OF EQC INTERIM CALENDAR AND SCHEDULE OF OUT-OF-HELENA EQC MEETINGS**

REP. TASH related that May 8th was the date set for graduation at Western in Dillon and, consequently, the facility would not be available for an EQC meeting on that date. Perhaps the meeting could be held on the 1st or the 15th, if the Council was looking for a Friday meeting. The cost would be \$165 for the small auditorium which would seat 150 people or \$100 for the Lewis and Clark Room. It would be important to coordinate the meeting date with other activities in the area. The Big Hole River Return Flow Study should be completed by that time and would be a good topic for discussion.

CO-CHAIR COCCHIARELLA questioned whether the June meeting might be a better time to hold a meeting in Dillon.

REP. TASH conveyed that perhaps June would be a better date for coordination of efforts from the Department of Commerce and the Growth Management Subcommittee.

CO-CHAIR MESAROS remarked that he was pleased with the turnout at their first out-of-Helena meeting. He expressed concern that they keep the meeting places geographically balanced.

CO-CHAIR COCCHIARELLA maintained that it was also important to meet in smaller locations. She further commented that a meeting held in a location such as Dillon would bring out public interest issues which differed from the concerns of a larger Montana city such as Missoula.

SEN. GROSFIELD remarked that almost everyone who testified at today's meeting commented that they attended the meeting because they were responding to a newspaper article. He questioned whether the Council might consider a paid advertisement for future meetings. He also commented that the Council should send a letter of acknowledgement to the reporter who covered the Missoula meeting.

REP. TASH commented that it was important to try for press coverage dealing with a local activity. Perhaps they could come up with a feature article dealing with a current local activity to enhance press coverage.

CO-CHAIR COCCHIARELLA asked the Council's approval for holding the June 26th meeting in Dillon. The Council members agreed to holding the June meeting in Dillon on the 26th of June.

## **XVI. INSTRUCTIONS TO STAFF**

CO-CHAIR COCCHIARELLA remarked that they appreciated the work of the EQC staff and commented that instructions to the staff had been communicated during the meeting.

**XVII. ADJOURNMENT**

There being no further business, the meeting adjourned at 4:05 p.m.